



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

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CIRCULAR NO. A-119

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Federal Participation in the Development and Use
of Voluntary Standards

1. Purpose. This Circular establishes policy to be followed by executive branch agencies in working with organizations which plan, develop, produce, and coordinate voluntary standards for materials, products, systems, services, processes, and practices. It also establishes policy to be followed by executive branch agencies in adopting and using such standards in procurement activities.

2. Background. The Federal Government performs many functions which involve the use of products and services that depend upon reliable standards. Many standards for such products and services, appropriate or adaptable for the Government's purposes, are developed and are available from certain private organizations, known as voluntary standards bodies. Federal participation in the standards-related activities of these voluntary bodies provides incentives and opportunities to establish standards that serve national needs. In addition, Federal use of voluntary standards, whenever practicable and appropriate, reduces the cost of developing and using standards and, thereby, serves the public interest. Federal adoption of such standards, moreover, is consistent with, and in furtherance of, the Federal Government's general policy of relying upon the private sector to supply Government needs for goods and services, as enunciated in OMB Circular No. A-76.

3. Coverage. This Circular applies to all executive branch agency participation in voluntary standards activities, both domestic and international, except as noted in paragraph 6, but does not apply to United States participation in multinational standards activities pursuant to treaties.

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4. Definitions. As used in this Circular:

a. Executive agency (hereinafter referred to as "agency") means an executive department, independent commission, board, bureau, office, agency, Government-owned or controlled corporation or other establishment of the Federal Government, including regulatory commission or board, and also the municipal government of the District of Columbia. It does not include the legislative or judicial branches of the Federal Government.

b. Standard means a prescribed set of rules, conditions, or requirements concerned with the definition of terms; classification of components; delineation of procedures; specification of materials, performance, design, or operations; or measurement of quality and quantity in describing materials, products, systems, services, or practices.

c. Voluntary standards are established generally by private sector bodies and are available for use by any person or organization, private or governmental. The term includes what are commonly referred to as "industry standards" as well as "consensus standards" but does not include professional standards of personal conduct, private standards of individual firms, or standards mandated by law, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351.

d. Government standards include in-house and agency standards and specifications as well as Federal and Military standards and specifications.

e. Voluntary standards bodies are nongovernmental bodies which are broadly based, multi-member, domestic and multinational organizations including, for example, nonprofit organizations, industry associations, and professional technical societies which develop, establish, or coordinate voluntary standards.

f. Standards-developing groups are committees, boards, or any other principal subdivisions of voluntary standards bodies, established by such bodies for the purpose of developing, revising, or reviewing standards and which are bound by the procedures of those bodies.

g. Secretary means the Secretary of Commerce or that Secretary's designee.

5. Policy. It is the general policy of the Federal Government to:

a. Rely on voluntary standards both domestic and international with respect to Federal procurement, whenever feasible and consistent with law and regulation pursuant to law;

b. Participate in voluntary standards bodies when such participation is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget limitations. Such participation, however, is limited to those voluntary bodies that conduct their standards activities in accordance with the criteria listed in paragraph 6c, unless such participation is required by law; and

c. Coordinate agency participation in voluntary standards bodies so that (1) the most effective use is made of Federal agency representatives; and (2) the views expressed by such representatives are in the public interest and, as a minimum, do not conflict with the interests and established views of Federal agencies.

6. Policy Guidelines. In implementing the policy established by this Circular, agencies should recognize the positive contribution of standardization and related activities. When properly conducted, standardization can increase productivity and efficiency in industry, expand opportunities for international trade, conserve resources, and improve health and safety. It also must be recognized, however, that these activities, if improperly conducted, could suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect trade, commerce, health, or safety. Full account shall be taken of the impact on the economy, applicable Federal laws, policies, and national objectives including, for example, laws and regulations relating to antitrust, national security, small business, product safety, environment, and conflicts of interest. In light of these considerations, the following policy guidelines are established to assist and govern implementation of the policy enunciated in paragraph 5, except that the provisions of paragraph 6c are not applicable to Federal participation in multinational organizations which develop and issue voluntary international standards. It should also be noted that the provisions of this Circular are not intended to create delay

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in the administrative process or provide new grounds for judicial review.

a. Reliance on Voluntary Standards in Federal Procurement.

(1) Voluntary standards that will serve the agencies' purposes and are consistent with applicable laws and regulations should be adopted, in whole or in part, and used by Federal agencies in the interests of greater economy and efficiency. While it is recognized that acceptable voluntary standards are more likely to result when developed in accordance with the due process and other basic criteria listed in paragraph 6.c, it is also recognized that suitable voluntary standards have resulted and will result from other developmental processes. Consequently, it would not be in the public interest for these guidelines to be interpreted as prohibiting the use of suitable voluntary standards merely because they were not developed in accordance with the criteria contained in paragraph 6.c. Federal agencies may, therefore, adopt and use such standards unless specifically prohibited by law from doing so. Voluntary standards will be given preference over in-house standards in the absence of mandatory Government standards unless use of such voluntary standards would result in impaired functional performance, unnecessary cost to the Government or the Nation, anticompetitive effects or other significant disadvantages. Agencies responsible for developing Government standards will periodically review their existing standards and cancel those for which an adequate and appropriate voluntary standard can be substituted.

(2) Voluntary standards which are adopted by Federal agencies will be cited, along with their dates of issuance and source of availability, in appropriate publications, regulatory orders, and related in-house documents.

(3) Agencies will not be inhibited, if within their statutory authorities, from developing and using in-house standards in the event that voluntary standards bodies cannot or do not develop a standard needed by, and acceptable to, these agencies or do not do so in a timely fashion. Nor shall the policies contained in this Circular be construed to commit any agency to the use of a voluntary standard which, after due consideration, is, in its opinion, inadequate, does not meet statutory criteria, or is otherwise inappropriate for the agency concerned.

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b. Participation in Voluntary Standards Bodies.

(1) Participation by knowledgeable Federal employees in the standards activities of voluntary standards bodies and standards-developing groups should be actively encouraged and promoted by Federal agency officials when such participation is consistent with the provisions of paragraphs 5b and 6c.

(2) Federal employees who, at Government expense, participate in standards activities of voluntary standards bodies and standards-developing groups will do so as Federal agency representatives and, as such, must be authorized to participate by appropriate agency officials.

(3) Federal agency participation in voluntary standards bodies and standards-developing groups will not, of itself, connote agency agreement with, or endorsement of, decisions reached by such bodies and groups or of standards approved and published by voluntary standards bodies.

(4) For procurement applications in which Federal requirements are consistent with those of the private sector, participation by Federal agency representatives should be aimed at contributing to the development of voluntary standards which will eliminate the necessity for in-house development of Federal standards for use in the procurement process.

(5) Federal agency representatives serving as members of standards-developing groups should participate actively in the standards activities of those groups but, in doing so, should not seek to dominate such groups. Active participation is intended to include full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities on such groups. Federal agency representatives may vote at each stage of standards development unless specifically prohibited from doing so by the head of the agency or that official's designee.

(6) The number of individual Federal agency participants in a given voluntary standards activity shall be kept to the minimum required for effective presentation of the various program, technical, or other concerns of Federal agencies.

(7) The granting of Federal support to a voluntary standards activity shall be limited to that which is clearly

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in furtherance of an agency's mission and responsibility. Normally, the total amount of Federal support given shall be no greater than that of all non-Federal participants in that activity except where it is in the direct and predominant interest of the Federal Government to develop a needed standard or revision thereto and such development appears unlikely to occur in the absence of such Federal support. The form of agency support, subject to legal and budgetary authority, may extend to:

(a) Direct financial support; e.g., grants, sustaining memberships, and contracts;

(b) Administrative support; e.g., travel costs, hosting of meetings, and secretarial functions;

(c) Technical support; e.g., cooperative testing for standards evaluation and participation of agency personnel in the activities of standards-developing groups; and

(d) Joint planning with voluntary standards bodies to facilitate a coordinated effort in resolving priority standardization problems.

(8) Participation by Federal agency representatives in the policymaking process of voluntary standards bodies is encouraged -- particularly in matters such as establishing priorities, developing procedures for preparing, reviewing, and approving standards, and creating standards-developing groups. In order to maintain the private, nongovernmental nature of such bodies, however, Federal agency representatives should refrain from decisionmaking involvement in the internal day-to-day management of such bodies (e.g., selection of salaried officers and employees, establishment of staff salaries).

c. Identification of Voluntary Standards Bodies for Federal Participation. As further described in paragraph 7a(2), the Secretary will prepare and maintain a list of voluntary standards bodies which wish to have Federal participation in their standards activities and which conduct their activities in accordance with the due process and other basic criteria contained in this paragraph. Voluntary standards bodies must be listed as a precondition to Federal participation unless such participation is required by law. The due process and other basic criteria to be adhered to by listed voluntary standards bodies are, as follows:

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(1) That public notice of meetings and other standards activities is provided in an appropriate and timely fashion; and, to invite broadly-based representation, through media which are designed to reach those persons reasonably expected to have an interest in the subject. Interested persons may include, for example, consumers; small business concerns; manufacturers; labor; suppliers; distributors; industrial, institutional and other users; environmental and conservation groups; and State and local procurement and code officials. Such notices should include a clear and meaningful description of the purpose of the meeting or other proposed activity;

(2) That public notice is given in an appropriate and timely fashion of the initiation, final review, and adoption or approval of new and revised voluntary standards, and the proposed withdrawal of such standards, through media characterized in paragraph 6c(1). Such notice must clearly describe the purpose and scope of the relevant standards;

(3) That meetings are open and that participation in standards activities is available to interested persons. Unreasonable restrictions on membership in standards-developing groups by means of professional or technical qualifications, trade requirements, unreasonable fees, or other such restrictions must be avoided;

(4) That decisions reached by voluntary standards bodies in their standards activities represent substantial agreement, after a concerted effort to resolve objections, and that such agreements are reached by the participants in accordance with the published procedures of the voluntary standards body and the judgment of the official(s) duly appointed by the voluntary standards body. Such agreements imply more than a simple majority but not necessarily unanimity;

(5) That prompt consideration is given to the expressed views and concerns of all interested parties including proposals made for new or revised standards;

(6) That adequate and impartial mechanisms for handling substantive and procedural complaints and appeals are in force for use by interested parties;

(7) That appropriate records, sufficient to review and understand what transpired, are maintained of formal discussions, decisions, standards, drafts, technical or other rationale for critical requirements of standards,

complaints/appeals and their resolution, meeting minutes and balloting results; and that such records are retained in accordance with published procedures and are readily accessible to all interested persons on a timely and reasonable basis;

(8) That either a one-time written policy statement is maintained in the official procedures of the body or that standards literature published by the voluntary standards body specifically state that participation by Federal agency representatives in that body does not constitute Government endorsement of that body or the standards which it develops. A voluntary standard which includes a list of its developers and identifies Federal agency representation must include this disclaimer;

(9) That voluntary standards bodies publish their official procedures and make them available to interested parties on a reasonable basis;

(10) That voluntary standards are periodically reviewed and revised, as necessary, and that participation in the review process is granted to all interested persons;

(11) That preference is given to the use of performance criteria in standards development when such criteria may reasonably be used in lieu of design, materials, or construction criteria.

7. Responsibilities.

a. The Secretary will:

(1) Coordinate and promote executive branch implementation of the policy in paragraph 5, in accordance with the policy guidelines in paragraph 6. The Secretary will establish within nine months of the date of this Circular

(a) Written procedures, developed in such a manner as to allow for the participation of all interested parties, to implement the provisions of this Circular; and

(b) An Interagency Committee on Standards Policy which the Secretary may call upon when needed to assist in implementing the policy contained herein. All executive branch agencies having substantial standardization involvement will be represented on that Committee and will

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cooperate with the Secretary, as requested, in carrying out tasks assigned to the Committee.

(2) Develop and maintain current a list of voluntary standards bodies which indicate a desire to be listed and which certify to the Secretary that they are in compliance with the due process and other basic criteria cited in paragraph 6c and which provide published evidence of such compliance. The list will be published in the Federal Register and will include the names of voluntary standards bodies and those relevant standards-developing groups in which Federal participation is authorized. The listing will not, however, include names of units subordinate to standards-developing groups. Upon receipt of a specific challenge regarding nonadherence to the due process and other basic criteria, the Secretary will take appropriate steps to determine whether a voluntary standards body or standards-developing group is, in fact, conducting its activities in accordance with the aforecited criteria. The Secretary may call upon the Department of Justice and the Federal Trade Commission for assistance in establishing specific provisions for the due process and other basic criteria in paragraph 6c and in evaluating adherence by voluntary standards bodies to those provisions;

(3) Establish procedures by which the listing of a voluntary standards body or standards-developing group can be challenged by interested persons. For purposes of this paragraph, each standards-developing group may be considered separately. Removal from the list of a group does not automatically call for the removal from the list of all groups of the parent body, or of the parent body itself. The Secretary will establish procedures by which:

(a) Such bodies and groups can be removed from the list if a determination is made by the Secretary that they are operating, and after appropriate notice continue to so operate, without benefit of the due process and other basic criteria cited in paragraph 6c.;

(b) Federal agencies will be notified of such removal for the purpose of ceasing their participation in the standards activities of such bodies and groups;

(c) Public notice will be provided of actions taken. Such procedures shall ensure that the rights of the body or group which is the subject of the challenge are comparable to those granted to challengers; and

(d) Voluntary standards bodies which have been delisted or have had one or more standards-developing groups delisted by the Secretary may reapply for listing for themselves or for their standards-developing groups.

(4) Establish and maintain current, with the cooperation of Federal agencies, a central public register of all voluntary standards activities in which Federal agencies participate;

(5) Establish and maintain current, a comprehensive and consolidated listing, cross-referenced by subject, of standards developed by voluntary standards bodies and by Federal agencies. Such listing of standards developed by bodies other than Federal agencies shall not necessarily constitute Government endorsement thereof;

(6) Establish a program which shall make available a department-sponsored voluntary dispute resolution service for the rapid handling of procedural complaints by interested parties against listed voluntary standards bodies. As a precondition to invoking that service, a complainant must seek relief from, and have exhausted all available sources of remedy within, the affected voluntary standards body. Such a service shall have, among its requirements, the agreement of both complainant and respondent to use the service and their consent to accept the determinations of the service as the sole and final administrative review by the executive branch;

(7) Report annually to the Office of Management and Budget concerning agency implementation of this Circular.

b. The heads of executive agencies concerned with standards and standardization activities will:

(1) Implement the policy in paragraph 5 of this Circular in accordance with the policy guidelines in paragraph 6 and the procedures to be established by the Secretary within 120 days of the issuance of those procedures;

(2) Establish appropriate procedures to ensure that:

(a) Agency representatives refrain from participating in the standards activities of voluntary standards bodies and standards-developing groups which are not listed by the Secretary of Commerce as conducting

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themselves in accordance with the due process and other basic criteria cited in paragraph 6c, unless such participation is specifically mandated by law;

(b) Agency representatives on voluntary standards bodies are familiar with the due process and other basic criteria contained in paragraph 6c, and that agency representatives who learn of an apparent infringement of the aforementioned criteria by a listed voluntary standards body or standards-developing group register their questions and concerns with that body or group and with their agencies; and

(c) The Secretary is notified of such incidents of apparent noncompliance with the aforementioned due process and other basic criteria by a listed voluntary standards body;

(3) Establish appropriate procedures by which agency representatives participating in voluntary standards bodies and standards-developing groups will, to the extent possible, ascertain the views of the agency on matters of paramount interest and will, as a minimum, express views which are not inconsistent or in conflict with established agency views;

(4) Endeavor, when two or more agencies participate in a given voluntary standards body or standards-developing group, to coordinate the views of their respective agencies on matters of paramount importance so as to present a single, unified position reflective of the public interest. In instances where agreement is not reached by the affected agencies, such agencies will notify the Secretary who shall designate a lead agency. The lead agency will be responsible for developing a unified position on the important matter at issue. In so doing, that designated lead agency will consider carefully the views of the other participating Federal agencies;

(5) Provide for participation in the Interagency Committee on Standards Policy to be established by the Secretary and cooperate with the Secretary, as requested, in carrying out the mission of that Committee;

(6) Consult with the Secretary in the development and issuance of agency regulations implementing this Circular, and submit, in response to the request of the Secretary, reports on the status of agency interaction with voluntary standards bodies.

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8. Reporting Requirements. One year from the date of issuance of this Circular, and each year thereafter, the Secretary will submit to the Office of Management and Budget a report on the status of Federal interaction with voluntary standards bodies. As a minimum, the report will include the following information:

a. The nature and extent of Federal agency participation in, and support of, voluntary standards bodies;

b. A summary of the nature of procedural complaints against listed voluntary standards bodies in accordance with the program to be developed, and a summary of the disposition of such complaints; and

c. An evaluation of the effectiveness of the policy promulgated in this Circular and recommendations for change or modification, as appropriate.

9. Inquiries. For information concerning this Circular, contact the Office of Management and Budget, Office of Federal Procurement Policy, telephone 202/395-7207.


James T. McIntyre, Jr.
Director